IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

Crl.MC.No. 811 of 2006()

AGAINST THE ORDER IN ST 3744 1999 IN
MC.31/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THRISSUR

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PETITIONERS:

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1. ELSY, W/O.DEVASSY, ALAPPADAN HOUSE,
   SASTHAMKADAVU DESOM, KOLANNUR VILLAGE,
   THRISSUR DISTRICT.

2. THANKAPPAN, S/O.MADHAVI AMMA,
   KOUNDIYATH VEETTIL, SASTHAMKADAVU DESOM,
   KODANNUR VILLAGE, THRISSUR TALUK.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS:

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1. SHAJU JOHN, S/O.C.O.JOHNY, PROPRIETOR,
   LEADEES AGENCY, CHALISSERY HOUSE,
   KIZHAKKUMPATTUKARA, THRISSUR.

2. SUKANYA KURIS AND LOAN PVT.LTD.,
   THRISSUR REP. BY T.K.RUBINA, S/O.KOCHAPPAN,
   THAIKKATTIL HOUSE, P.O. KUTTOOR,
   THRISSUR DISTRICT.

3. STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

R3 BY PUBLIC PROSECUTOR SRI. SU. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 811 of 2006

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Dated this the 14th day of February, 2007

O R D E R

The petitioners were sureties of an accused in a prosecution under Section 138 of the N.I. Act. The accused was found guilty, convicted and sentenced in that prosecution. Long later, during the pendency of a revision petition before this Court, the parties settled the said dispute and the offence was compounded. Accordingly the revision petition was allowed accepting the composition.

2. The petitioners have now come to this Court with a prayer that Annexures A and B warrants issued by the learned Magistrate against them in enforcement of an order passed under Section 446 Cr.P.C. may be quashed.

3. What is the reason? The only reason urged is that the criminal case, in which the accused faced indictment, has been compounded at the revisional stage. This by itself cannot help the petitioners to claim absolution from liability in proceedings under Section 446 Cr.P.C. An order passed under Section 446 Cr.P.C. can be challenged by filing an appeal under Section 449 Cr.P.C. The

petitioners have not chosen to challenge the order passed under Section 446 Cr.P.C. by filing a proper appeal under Section 449 Cr.P.C. They have not chosen even to produce the order passed by the learned Magistrate under Section 446 Cr.P.C. in this proceedings. The short ground on which quashing of Annexurs A and B, which are only subsequent proceedings taken in pursuance of an order under Section 446 Cr.P.C., is sought is that there has been a composition. I am not at all persuaded to accept the said request.

4. The learned counsel for the petitioner, relying on the decision in **Jameela** v. **State of Kerala** (2004 (2) KLT 638), contends that the mere existence of a right to appeal under Section 449 Cr.P.C. is not a ground not to invoke the powers under Section 482 Cr.P.C.

5. I am unable to accept this contention at all. The law provides remedies and a person, who does not take advantage of the remedy available under law, cannot lightly request this Court to invoke the powers under Section 482 Cr.P.C. A reading of the judgment in **Jameela** reveals that that was an exceptional case where the whereabouts of the accused was not known and he was, unknown to all, confined in a mental hospital in Tamil Nadu. The dictum in **Jameela** cannot persuade this Court to hold

that every person, who, in spite of the availability of a remedy of appeal under Section 449 Cr.P.C., can approach this Court with petition under Section 482 Cr.P.C. The Crl.M.C. in that case was filed challenging an order under Section 446(3) Cr.P.C. I do not, in these circumstances, find any merit in the prayer to quash Annexs. A and B without challenging an order passed under Section 446 Cr.P.C.

6. This Crl.M.C. is hence dismissed. I may hasten to observe that the dismissal of this petition will not fetter the rights of the petitioner to challenge the order passed under Section 446 Cr.P.C. by initiating appropriate proceedings under law.

(R. BASANT)
Judge

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